

DRAFT

30 SEP 1983

A BILL

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Information Act of 1983".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that--

(1) the Freedom of Information Act is providing the people of the United States with an important means of acquiring information concerning the workings and decision-making processes of their government, including the Central Intelligence Agency;

(2) the full application of the Freedom of Information Act to the Central Intelligence Agency is, however, imposing unique and serious burdens on this agency;

(3) the processing of a Freedom of Information Act request by the Central Intelligence Agency normally requires the search of numerous systems of records for information responsive to the request;

(4) the review of responsive information located in operational files which concerns sources and methods utilized in intelligence operations can only be accomplished by senior intelligence officers having the necessary operational training and expertise;

(5) the Central Intelligence Agency must fully process all requests for information, even when the requester seeks information which clearly cannot be released for reasons of national security;

(6) release of information out of operational files risks the compromise of intelligence sources and methods;

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(7) eight years of experience under the amended Freedom of Information Act has demonstrated that this time-consuming and burdensome search and review of operational files has resulted in the proper withholding of information contained in such files. The Central Intelligence Agency should, therefore, no longer be required to expend valuable manpower and other resources in the search and review of information in these files;

(8) the full application of the Freedom of Information Act to the Central Intelligence Agency is perceived by those who cooperate with the United States Government as constituting a means by which their cooperation and the information they provide may be disclosed;

(9) information concerning the means by which intelligence is gathered generally is not necessary for public debate on the defense and foreign policies of the United States, but information gathered by the Central Intelligence Agency should remain accessible to requesters, subject to existing exemptions under law;

(10) the organization of Central Intelligence Agency records allows the exclusion of operational files from the search and review requirements of the Freedom of Information Act while leaving files containing information gathered through intelligence operations accessible to requesters, subject to existing exemptions under law; and

(11) the full application of the Freedom of Information Act to the Central Intelligence Agency results in inordinate delays and the inability of these agencies to respond to requests for information in a timely fashion.

(b) The purposes of this Act are--

(1) to protect the ability of the public to request information from the Central Intelligence Agency under the Freedom of Information Act to the extent that such requests do not require the search and review of operational files;

(2) to protect the right of individual United States citizens and permanent resident aliens to request information on themselves contained in all categories of files of the Central Intelligence Agency; and

(3) to provide relief to the Central Intelligence Agency from the burdens of searching and reviewing operational files, so as to improve protection for intelligence sources and methods and enable this agency to respond to the public's requests for information in a more timely and efficient manner.

SEC. 3. (a) The National Security Act of 1947 is amended by adding at the end thereof the following new title:

"TITLE VII - RELEASE OF REQUESTED INFORMATION
TO THE PUBLIC BY THE CENTRAL INTELLIGENCE
AGENCY

"Designation of Files by the Director of Central Intelligence as Exempt from Search, Review, Publication or Disclosure"

"SEC. 701. (a) In furtherance of the responsibility of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure as set forth in section 102(d)(3) of this Act (50 U.S.C. 403(d)(3)) and section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g), operational files located in the Directorate of Operations, Directorate for Science and Technology, and Office of Security of the Central Intelligence Agency shall be exempted from the provisions of the Freedom of Information Act which require publication or disclosure, or search or review in connection therewith, if such files have been specifically designated by the Director of Central Intelligence to be

concerned/with/++

[illegible]

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Y/AY/INTELIGENCE/OF/SECURITY/LIAISON/ARRANGEMENTS/OF
INTERMEDIATION/EXCHANGES/WITH/FOREIGN/GOVERNMENTS/OF/THEIR
INTELIGENCE/OF/SECURITY/SECURITY

"(2) files of the Directorate of Operations which document foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services; or

"Provided, however, that nondesignated files which may contain information derived or disseminated from designated operational files shall be subject to search and review. The inclusion of information from operational files in nondesignated files shall not affect the designation of the originating operational files as exempt from search, review, publication or disclosure. Provided further, that the designation of any operational files shall not prevent the search and review of such files for

information concerning any special activity the existence of which is not exempt from disclosure under the provisions of the Freedom of Information Act, or for information that was reviewed and relied upon in the course of an investigation by the intelligence committees of the Congress, the Intelligence Oversight Board, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of Central Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive in the conduct of an intelligence activity.

"(b) The provisions of subsection (a) of this section shall not be superseded except by a provision of law which is enacted after the date of enactment of subsection (a), and which specifically cites and repeals or modifies its provisions.

"(c) Notwithstanding subsection (a) of this section, proper requests by United States citizens, or by aliens lawfully admitted for permanent residence in the United States, for information concerning themselves, made pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) or the Freedom of Information Act (5 U.S.C. 552), shall be processed in accordance with those Acts.

"(d) The DCI shall promulgate regulations to implement this section as follows:

"(1) Such regulations shall require the appropriate Deputy Directors or Office Heads to: (A) specifically identify categories of files under their control

which they recommend for designation; (B) explain the basis for their recommendations; and (C) set forth procedures consistent with the statutory criteria in subsection 701(a) which would govern the inclusion of documents in designated files. Recommended designations, portions of which may be classified, shall become effective upon written approval of the Director of Central Intelligence.

"(2) Such regulations shall further provide procedures and criteria for the review of each designation not less than once every ten years to determine whether such designation may be removed from any category of files or any portion thereof. Such criteria shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portion thereof and the potential for declassifying a significant part of the information contained therein.

"(e)(1) On complaint under subparagraph 552(a)(4)(B) of title 5 that the Agency has improperly withheld records because of improper designation of files or improper placement of records solely in designated files, the court's review shall be limited to a determination whether the Agency regulations implementing subsection 701(a) conform to the statutory criteria set forth in that subsection for designating files, unless the complaint is supported by an affidavit, based on personal knowledge or otherwise admissible evidence, which makes a prima facie showing that (i) a specific file has been improperly designated; or (ii) the records requested were

improperly placed solely in designated files. If the court finds that a prima facie showing has been made under this subsection, it shall order the Agency to file a sworn response, which may be filed in camera and ex parte and the court shall make its determination based upon these submissions and submissions by the plaintiff. If the court finds under this subsection that the Agency's regulations implementing subsection 701(a) of this section do not conform to the statutory criteria set forth in that subsection for designating files, or finds that the Agency has improperly designated a file or improperly placed records solely in designated files, the Court shall order the Agency to search the particular designated file for the requested records in accordance with the provisions of the Freedom of Information Act and to review such records under the exemptions pursuant to subsection 552(b) of title 5. If at any time during such proceedings the CIA agrees to search designated files for the requested records, the court shall dismiss the cause of action based on this subsection.

"(2) On complaint under section 552(a)(4)(B) of title 5 that the Agency has improperly withheld records because of failure to comply with the regulations adopted pursuant to subsection (d)(2), the court's review shall be limited to determining whether the Agency considered the criteria set forth in such regulations."

(b) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

"TITLE VII - RELEASE OF REQUESTED INFORMATION
TO THE PUBLIC BY THE CENTRAL INTELLIGENCE
AGENCY

"Sec. 701. Designation of Files by the Director of Central Intelligence as Exempt from Search, Review, Publication or Disclosure."

SEC. 4. The amendments made by section 3 shall be effective upon enactment of this Act and shall apply with respect to any requests for records, whether or not such request was made prior to such enactment, and shall apply to all cases and proceedings pending before a court of the United States on the date of such enactment.